

MORRISON & FOERSTER LLP
1290 Avenue of the Americas
New York, New York 10104
Telephone: (212) 468-8000
Facsimile: (212) 468-7900
Gary S. Lee
Norman S. Rosenbaum
James A. Newton

*Counsel for the Debtors and
Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Case No. 12-12020 (MG)
)	
RESIDENTIAL CAPITAL, LLC, <u>et al.</u> ,)	Chapter 11
)	
Debtors.)	Jointly Administered
)	

**DEBTORS' OBJECTION TO MOTION OF CREDITOR JULIO SOLANO
FOR ORDER PURSUANT TO SECTION 362(D) OF THE
BANKRUPTCY CODE, BANKRUPTCY RULE 4001 AND LOCAL BANKRUPTCY
RULE 4001-1 MODIFYING THE AUTOMATIC STAY TO ALLOW
CONTINUATION OF PRE-PETITION LITIGATION**

Residential Capital, LLC and its affiliated debtors and debtors in possession in the above-captioned Chapter 11 cases (collectively, the “**Debtors**”), including GMAC Mortgage, LLC (“**GMAC Mortgage**”) hereby submit this objection (the “**Objection**”) to the *Motion of Creditor Julio Solano for Order Pursuant to Section 362(d) of the Bankruptcy Code, Bankruptcy Rule 4001 and Local Bankruptcy Rule 4001-1 Modifying the Automatic Stay to Allow Continuation of Pre-Petition Litigation* [Docket No. 2604] (the “**Motion**”). In support hereof, the Debtors respectfully state as follows:

OBJECTION

1. By his Motion, Julio Solano (the “**Movant**”) seeks relief from the automatic stay in order to permit him to pursue claims against GMAC Mortgage in a state court lawsuit captioned *Solano v. GMAC Mortgage Corp.*, Case No.: SCV 249801 (Cal. Sup. Ct.) (the “**Action**”). In the Action, Movant seeks damages and to set aside a February 15, 2011 trustee sale conducted by ETS. Motion at 5. Movant asserts that he is entitled to relief from the automatic stay to permit him to proceed with his claims against the Debtors.

A. Movant is Barred from Asserting Claims Against the Debtors Because he Failed to File a Proof of Claim

2. The Debtors object to the Motion because Movant has not filed a proof of claim in these chapter 11 cases.¹ The claims bar date in this case occurred on November 16, 2012. Having not filed a proof of claim prior to the claims bar date, Movant is “forever barred, estopped and enjoined” from asserting any prepetition claims against the Debtors. *Order Establishing Deadline for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof* ¶ 11.² Accordingly, granting Movant relief from the automatic stay to pursue his claims in the action would be futile, because Movant would not be entitled to assert against the Debtors any money judgment arising from the Action.

3. The Debtors are prepared to stipulate to limited relief from the automatic stay to permit Movant to proceed in the Action solely to adjudicate his claims seeking to set aside the

¹ Movant subsequently filed a motion to file a late proof of claim [Docket No. 2935] and an adversary proceeding seeking a determination that any debt owed by the Debtors to Mr. Solano is nondischargeable [Adv. Proc. No. 13-01255]. Concurrently herewith, the Debtors have filed an objection (the “**POC Objection**”) to Mr. Solano’s motion to file a late proof of claim. The POC Objection is incorporated herein by reference.

² Movant was served with the bar date notice, through his counsel, Richard Sax. See Affidavit of Service [Docket No. 1412], Exhibit I at 5663. See POC Objection at Exhibit 1.

trustee's sale and cancel the trustee's deed upon sale, but will not consent to relief to permit Movant to litigate his claims in the Action that seek monetary damages.

WHEREFORE, the Debtors respectfully submit that for the foregoing reasons, the Motion should be denied.

New York, New York
Dated: March 14, 2013

/s/ Norman S. Rosenbaum

Gary S. Lee
Norman S. Rosenbaum
James A. Newton
MORRISON & FOERSTER LLP
1290 Avenue of the Americas
New York, New York 10104
Telephone: (212) 468-8000
Facsimile: (212) 468-7900

*Counsel to the Debtors and
Debtors in Possession*